

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 1783 of 1986

For Approval and Signature:

Hon'ble MR.JUSTICE KUNDAN SINGH

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1. Whether Reporters of Local Papers may be allowed to see the judgements? -
2. To be referred to the Reporter or not? -

3. Whether Their Lordships wish to see the fair copy of the judgement? -
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? -
5. Whether it is to be circulated to the Civil Judge?

DIVISIONAL CONTROLLER

NANAVATI & NANAVATI for Petitioner
MR KN RAVAL for Respondent No. 1
RULE SERVED for Respondent No. 2

2. The petitioner was working as a driver in the respondent - Gujarat State Road Transport Corporation, Rajkot Division. At the relevant time he was serving at Gondal Depot of Rajkot Division. The petitioner could not report for his duty from 14-1-1981 to 13-2-81 since he was sick. Later on the petitioner submitted his sick report along with the medical certificate stating therein that he was not fit to resume his duties. Thereafter,

the petitioner could not resume his duties due to his continuous ill health and hence he sent another two sick reports along with the medical certificates on 11-3-1981 and 27-3-1981. The following charges were levelled against the petitioner :-

"From 14-1-81 to 13-2-81 you remained absent from your duties without taking any prior permission from your superiors or without informing them. Thus, you are often in the habit of remaining absent without prior permission. Thus, you have created inconvenience in the functioning of the department by remaining absent without prior sanction of the leave, by flouting the administrative circulars. Thus, you are found negligent by committing the above mentioned irregularities.

Thus, you have committed the misconduct mentioned in Rules 22, 27 and 38 of Sch. A of the Discipline and Appeal Rules, of the Establishment."

3. After the departmental inquiry which proceeded exparte against the petitioner, the petitioner was dismissed from service with effect from 28-3-1981. The petitioner filed an appeal before the Departmental Appellate Authority which was also rejected. The petitioner raised an industrial dispute before the Conciliation Officer in which also settlement could not be arrived at and hence the dispute was referred to the Labour Court, Rajkot. By the impugned judgment and award passed in the aforesaid Reference, the Labour Court, Rajkot set aside the dismissal order against the petitioner and the respondent - Corporation was directed to reinstate the workman - petitioner to his original post with continuity of service but without back wages within one month from the date of publication of the award. In case of default, the workman will be entitled to the full back wages from the date of default till reinstatement. This petition has been filed for full back wages.

4. Learned counsel for the petitioner contended that the notice was not served on the petition regarding initiation of the departmental proceedings and once the dismissal order was held to be illegal and unjust by the Labour Court, it is the duty of the Tribunal to award back wages also.

5. I have heard learned counsel for the parties and

I have gone through the relevant papers.

6. The Labour Court found the fault on the part of the workman in not informing the respondent - department as soon as he fell ill and his misconduct was considered to be a technical one as he filed the sick report immediately after 14-1-1981. The Labour Court has also made an observation that the default card exh. 24 shows that the workman was previously punished for 5 times for such misconduct and he remained absent on duty without leave and thus the workman is accustomed to remain absent without leave. The workman was holding the post of driver and he suddenly remained absent without permission for several days without any intimation. The respondent Corporation as well as general public would be put to great difficulty and inconvenience though the misconduct is minor one he should be seriously punished. But at the same time, the highest punishment of dismissal for such misconduct is disproportionate and therefore it should be reduced u/s 11A of the Industrial Disputes Act, 1947. By the impugned award the Labour Court, Rajkot set aside the dismissal order of the petitioner and the respondent Corporation was directed to reinstate the petitioner to his original post with continuity of service without back wages.

7. Learned counsel for the petitioner could not point out any illegality or infirmity in the impugned award calling for interference of this Court. I do not find any merit in this petition. Accordingly, this petition is dismissed. Rule is discharged, with no order as to costs.

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